Supreme Court, U.S.
FILED
JAN 2 2003
CLERK

No. 02-466

In The

Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,

Petitioner,

versus

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Louisiana

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI SUBMITTED BY THE STATE OF LOUISIANA AND THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE

R. GRAY SEXTON
Counsel of Record
MARIS LEBLANC MCCRORY
KATHRIN YATES NIELSON
Counsel for the Respondents
2415 Quail Drive
Third Floor
Baton Rouge, LA 70808
Telephone: (225) 763-8777

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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I. INTRODUCTION

The Casino Association of Louisiana is before this Honorable Court seeking a Writ of Certiorari because the Louisiana Supreme Court upheld the constitutionality of La. R.S. 18:1505.2L that imposes a statutory ban on political campaign contributions from members of the state's gaming industry. *Casino Association of Louisiana v. State of Louisiana, et al.*, 2002-0265 (La. 6/21/02), 820 So.2d 494. The State of Louisiana and the Board of Ethics, as the Supervisory Committee on Campaign Finance Disclosure, opposes the granting of a Writ of Certiorari because there are no writ grant considerations presented by this case and because the Louisiana Supreme Court's decision is correct under the First Amendment to the United States Constitution.

This Honorable Court, in *Buckley v. Valeo,* 424 U.S. 1 (1976), and again in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 337 (2000), upheld the constitutionality of state legislative restrictions on campaign contributions from certain groups. In reliance on these rulings, the Louisiana Supreme Court upheld the constitutionality of La. R.S. 18:1505.2L, that prohibits the casino gaming industry from making campaign contributions to candidates and political committees that support or oppose candidates. The court found that Louisiana demonstrated that the statute is closely drawn to avoid unnecessary abridgment of associational freedoms, while providing a means of combating corruption and the appearance of corruption, a substantial state interest in Louisiana.

II. STATEMENT OF THE CASE

In 1996, the Louisiana Legislature legalized various forms of gaming. Coincident to the creation of the state's gaming industry, the legislature expressed its intention to prevent the corruption that is caused by the undue influence of the gaming industry on the election process. It therefore enacted a prohibition on campaign contributions

from persons with a substantial interest in the video poker industry, in riverboat gaming, and in the authorized land-based casino.

In *Penn v. State of Louisiana*, 99-2337 (La. 10/29/99), 751 So.2d 823, *rehearing denied* (La. 11/24/99), *cert. denied* (U.S. 5/15/00), the Louisiana statutes banning campaign contributions from video poker licensees were declared unconstitutional. A petition for a writ of certiorari was denied, without comment, by this Honorable Court on May 15, 2000.[1]

On September 20, 2000, the Casino Association and its individual members joined as plaintiffs in filing a Petition for Declaratory Judgment in the 19th Judicial District Court, East Baton Rouge Parish, Louisiana, based upon the Louisiana Supreme Court's decision in *Penn*, alleging that the legislative ban on campaign contributions from those in the riverboat and land-based casino industry are unconstitutional.

A trial was conducted on October 4, 2001, and the matter was taken under advisement. On October 30, 2001, the trial court rendered and signed a judgment, with reasons. The judgment was amended on December 4, 2001, declaring unconstitutional La. R.S. 18:1505.2(L)(3)(a)(ii), La. R.S. 18:1505.2(L)(3)(b)(c)(e) insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii) and (iii) and 42 La. Admin. Code Pt. IX, §2941.

On motion of the state agencies and officials named as defendants, an order of suspensive appeal was granted, returnable on February 2, 2002.[2] The record was lodged in the Louisiana Supreme Court on January 25, 2002.

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[1] The *Penn* decision came before this Court's ruling in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 337 (2000).

[2] Louisiana Constitution Article V, §5(D) allows for direct appeal to the Louisiana Supreme Court whenever a state statute is invalidated as unconstitutional.

On June 21, 2002, the Louisiana Supreme Court declined to follow its earlier four-three per curiam decision in *Penn,* and held that the legislative bans "on campaign contributions by riverboat gaming and land-based casino interests do not violate the First and Fourteenth Amendments to the United States Constitution." *Casino Ass'n*, 2002-0265 at p. 4, 820 So.2d at 497.

III. SUMMARY OF THE ARGUMENT

The Petition for a Writ of Certiorari before the Court in the instant case lacks the appropriate grounds for the granting of certiorari. The sole issue in this case is whether the Louisiana Supreme Court properly upheld the constitutionality of La. R.S. 18:1505.2L that prohibits riverboat and land-based casino interests from making monetary contributions to political campaigns. This issue was addressed and resolved by this Court in *Buckley*, 424 U.S. 1, and again in *Shrink Missouri*, 528 U.S. 337.

Louisiana's Supreme Court properly upheld the challenged statute, applying the appropriate First Amendment standard of scrutiny set forth by this Court in *Shrink Missouri*, 528 U.S. 337. The Louisiana Supreme Court found the challenged statute closely drawn to support a sufficiently important governmental interest, the prevention of the appearance of corruption and the threat of actual corruption in the election process. This substantial state interest is sufficient to justify the state's restriction on political contributions from the gaming industry.

This Court has recognized that the prevention of corruption, or its appearance, is a legitimate and substantial governmental interest to support contribution restrictions. In fact, this Honorable Court has even characterized

the governmental interest as "compelling."[3] Louisiana has endured a unique and tortured relationship with governmental corruption and gambling. The state's history, the nature of the gaming industry, and the public perception of it must be considered in judging the significance of Louisiana's interest in restricting the gaming industry's influence in political campaigns.

The Louisiana Supreme Court properly found the statutory scheme to be closely drawn to effectuate the significant governmental interest of preventing corruption, or the appearance of corruption, by banning the flow of money from the gaming industry to political candidates. The statute applies only to those individuals or entities whose interests are deeply intertwined with the gaming industry.

The distinction between the freedom to make independent expenditures on the one hand, and restrictions on campaign contributions on the other, is an important aspect of this Court's jurisprudence since *Buckley*, and is recognized in the Louisiana Supreme Court's decision. Gaming interests are free to make independent expenditures as the statutory ban is narrowly tailored to cover only campaign contributions. All other customary avenues of free speech and political expression and association are open to the members of the gaming industry.

At least seven states have enacted bans on campaign contributions from casino interests and in two of those states the highest court has upheld the constitutionality of the bans. Other states have enacted similar bans on participants in other industries to prevent those groups from using campaign contributions to influence legislation regulating their industry. These restrictions evidence a

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[3] *Fed. Election Comm'n v. Nat. Conserv. Pol. Action*, 470 U.S. 480, 496-497 (1985).

national trend in the expression of American public policy that deserves recognition and deference.

Participation in certain regulated activities, or the granting of certain state-controlled privileges, often requires the concomitant restriction of certain other opportunities. The state has ultimate discretion under Louisiana's Constitution with regard to gaming, and may completely outlaw the activity in the state. Rather, the state has chosen to allow very restricted licensing which includes limits on the licensee's participation in state political campaigns.

IV. ARGUMENT

May it Please the Court:

A. There Are No Writ Grant Considerations Presented by This Case.

This case does not provide proper grounds for this Honorable Court to grant the Petition for a Writ of Certiorari. Supreme Court Rule 10 governs the considerations for granting certiorari, providing three basic grounds for the Court to exercise its discretion: (1) A conflict exists, on the same important matter, among the United States courts of appeal, or between a court of appeal and a state court of last resort, or a court of appeal's extreme departure from accepted and usual judicial proceedings, or its sanctioning of such from a lower court, calls for the exercise of this Court's supervisory jurisdiction; (2) a conflict has arisen on a federal question between a state court of last resort and another state court of last resort or of the United States court of appeals; (3) a lower court decision is in conflict with a decision of this Court, or an important question of federal law needs to be settled by this Court. The Casino Association does not specifically state which of these considerations it relies upon in seeking this Court's discretionary review, but appears to call upon all three in part.

The instant case presents one issue: Whether the Louisiana Supreme Court properly upheld the constitutionality of La. R.S. 18:1505.2L, under this Court's pronouncements in *Buckley*, 424 U.S. 1, and *Shrink Missouri*, 528 U.S. 337. However, the Casino Association's statement that "the lower courts have divided on the First Amendment's application to more than two dozen state laws imposing contribution bans that are defined by occupation or industry affiliation," is an attempt to create the illusion of conflict among the various courts of the states. Petition, 12. Yet only one state law, banning only one industry from making contributions, is properly presented in this case. While numerous states have a statutory ban on contributions, only two state courts have considered the issue presented herein: Louisiana and New Jersey. Both state courts upheld the constitutionality of a legislative ban on political campaign contributions from the casino industry.

Buckley and *Shrink Missouri* provide the principles upon which the Louisiana Supreme Court properly relied in determining that Louisiana may permissibly ban campaign contributions from the casino industry. *Buckley* established that while independent expenditures are treated as pure speech under the First Amendment, and are reviewed under strict-scrutiny, contribution limits bear on the freedom of association and are reviewed under a standard less exacting. This Court has ruled that contribution limits are permissible state action, but they must be closely drawn to serve a substantial state interest. The substantial state interest relied upon by Louisiana is the same interest that this Court has sanctioned repeatedly, the prevention of corruption and the appearance of corruption. Permissible campaign contribution limits are not determined by the rote comparison of dollar amounts. Rather, a court is to determine the impact of the contribution limit on the candidate's ability to amass the financial resources necessary to mount an effective campaign. All of these principles have been clearly set forth by this Court in *Buckley* and *Shrink Missouri*, with no issues left to be addressed; these decisions provided the framework for the

Louisiana Supreme Court's proper resolution of this case. As this Court has already addressed all the questions raised by Louisiana's statutory restrictions on campaign contributions from the Casino Association, the Court need not exercise its discretion to review the Louisiana Supreme Court decision.

1. Statutes are Presumed Constitutional.

"Statutes are presumed to be constitutional, and the burden of proving that an act of the legislature is unconstitutional is upon the party attacking the act." *Soloco, Inc. v. Dupree*, 1997-1256, p. 3 (La. 1/21/98), 707 So.2d 12, 14, citing *Moore v. Roemer*, 567 So.2d 75, 78 (La.1990). The burden is on the party attacking the legislative arrangement to "negative every conceivable basis which might support it." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973) (quoting *Madden v. Kentucky,* 309 U.S. 83 (1940)).

> A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function.

Lehnhausen, 410 U.S. at 364-365 (quoting *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 510 (1937)).

"The power of the legislature is plenary, and a party challenging a statute's constitutionality must articulate a

particular constitutional provision that limits the legislature's powers." *Soloco, Inc.*, 1997-1256 at p. 3, 707 So.2d at 14, citing *Chamberlain v. State, Through DOTD*, 624 So.2d 874 (La.1993). In the instant case, the Casino Association failed to demonstrate to the Louisiana Supreme Court that La. R.S. 18:1505.2L violates the First Amendment of the United States Constitution. Instead, the Louisiana Supreme Court found that the campaign contribution limits in the statute fall within the permissible reaches of state legislative power under this Court's First Amendment analysis in *Buckley*, 424 U.S. 1, and *Shrink Missouri,* 528 U.S. 337.

2. The Louisiana Supreme Court Selected the Proper Standard For First Amendment Analysis.

Although campaign finance regulations operate in an area of First Amendment protection, a state may permissibly limit the ability to make campaign contributions. Under this Court's analysis from *Buckley* and *Shrink Missouri*, strict-scrutiny is not required for the examination of restrictions on campaign contributions. Rather, *Buckley* required that contribution limits be "closely drawn" to further a "sufficiently important" state interest. The Court explained that contribution limits burden only "one aspect of the contributor's freedom of political association." *Casino Ass'n*, 2002-2065 at p. 7, 820 So.2d at 500 (quoting *Buckley*, 424 U.S. at 24.). As stated in *Buckley*, "even a 'significant interference' with protected rights of political association may be sustained if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley*, 424 U.S. at 25.

Here, as in *Buckley* and *Shrink Missouri*, restrictions on campaign contributions, as distinguished from independent expenditures, are at issue. Restrictions on contributions are subject to a less stringent standard of review than restrictions on expenditures because the

making of a campaign contribution is not a direct expression of speech. As noted in *Buckley*:

> While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, 424 U.S. at 21.

Buckley struck down the restrictions on expenditures within the Federal Election Campaign Act of 1971, while **upholding** contribution limits. The *Buckley* Court held as follows:

> By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication.

Buckley, 424 U.S. at 20.

A contribution to a political campaign does not result in speech by the contributor, but rather purchases advertising or other campaign essentials that produce speech by the candidate or political party. Such "'speech by proxy' . . . is not the sort of political advocacy that [the] Court in *Buckley* found entitled to full First Amendment protection." *California Medical Association, et al. v. Federal Election Commission*, 453 U.S. 182, 196 (1981). In *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197 (1982), the Court upheld a prohibition against a non-profit corporation soliciting monies to be used to make contributions to political candidates from any person other than its "members." In finding that the legislation properly advanced the interest of Congress in preventing the potential for, or the appearance of, corruption, the Court decreed: "*Nor will we second-guess a legislative determination as to the need for prophylactic*

measures where corruption is the evil feared." Id. at 210 (emphasis added).

This deference toward legislative policy concerning campaign contributions is based upon the distinction between the contribution and the independent expenditure recognized in *Buckley*. "The Court concluded in *Buckley* that there is a fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to be spent on the campaign." *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 497 (1985); see also *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 283 (1986).

In *Shrink Missouri*, the Court reaffirmed the distinction between campaign contributions and independent expenditures, treating limits on expenditures as direct restraints on speech, while finding that contribution restrictions left speech significantly unimpaired because contribution limits bear more on associational freedom under the First Amendment. *Shrink Missouri*, 528 U.S. at 387-388.

As a result, the Court applies a less stringent standard in testing the constitutionality of limitations imposed on campaign contributions. The *Shrink Missouri* Court explained that under *Buckley*'s rationale, a contribution limit involving significant interference with associational rights will survive if the government demonstrates that regulating contributions is a means "closely drawn" to match a "sufficiently important interest." *Ibid.*

Therefore, the test which must be applied in this case is whether the statute provides a means "closely drawn" to further a "sufficiently important interest." The Louisiana Supreme Court properly selected this standard and applied it to uphold the constitutionality of the prohibitions in La. R.S. 18:1505.2L. The court stated:

> [T]he restriction is to [be] analyzed under the burden of proof enunciated in *Buckley*, as clarified in later Supreme Court cases, i.e. "that a contribution limit involving 'significant interference' with associational rights, could survive if the Government demonstrated that the contribution regulation was "closely drawn" to match a "sufficiently important interest."

Casino Ass'n, 2002-0265 at p. 13, 820 So.2d at 504.

This Honorable Court need not exercise its discretion in the instant case because the ban on campaign contributions by riverboat and land-based casino gaming interests was properly tested in the Louisiana Supreme Court under this Court's guidelines in *Buckley* and *Shrink Missouri*.

a. There is No Constitutional Minimum Dollar Amount Below Which Legislatures May Not Regulate.

In *Shrink Missouri*, this Court considered a challenge that contribution limits between $250 and $1,000 were too low under *Buckley*'s rationale to be constitutional. Likewise, in the case at bar, the Casino Association argues that Louisiana's "limit of zero" is below the constitutional minimum. However, nothing in *Buckley* nor *Shrink Missouri* assigned a permissible minimum dollar amount for the restriction of campaign contributions. The Louisiana Supreme Court aptly rejected petitioners' argument that Louisiana's ban on contributions falls below a constitutional minimum dollar amount in reliance on this Court's statement in *Shrink Missouri,* that "[i]n *Buckley*, we specifically rejected the contention that $1,000 or any other amount, was a constitutional minimum below which the legislatures could not regulate." *Casino Ass'n*, 2002-0126 at p. 11, 820 So.2d at 502 (citation omitted) (italics supplied).

b. Louisiana Candidates "Amass the Resources Necessary for Effective Advocacy" Without Casino Association Funds.

The Louisiana Supreme Court is not the only state court to approve a legislative ban, or a "limit of zero," on contributions under *Buckley*. The United States District Court in the Eastern District of California recently upheld the California law that imposes a ban on lobbyist campaign contributions made to candidates for elected state office, and to officeholders. *Institute of Governmental Advocacy v. Fair Political Practices Commission*, 164 F.Supp.2d 1183 (E.D. CA 9/17/01). The California plaintiffs, like the Casino Association in the instant case, argued that the statute was unconstitutional because it banned, rather than limited, contributions. In rejecting that argument, the court stated:

> [C]ontrary to plaintiffs' assertions, a ban on contributions is *not* per se illegal. First, as set forth by the United States Supreme Court in *Nixon*, the test for determining the validity of the amount of a limitation (here a complete ban) is whether the limit is "so low as to impede the ability of a candidate to amass the resources necessary for effective advocacy."

Id. 164 F.Supp.2d at 1191 (citations omitted.).

A similar ban on contributions by lobbyists in North Carolina was also recently upheld. *North Carolina Right to Life v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), *cert. denied*, 528 U.S. 1153 (2000). The Louisiana Supreme Court was not unmindful of these pronouncements by sister state courts in determining the permissible limits of state public policy. The court upheld the ban on contributions in La. R.S. 18:1505.2L under the same standard applied by the California and North Carolina courts following this Court's reasoning in *Shrink Missouri*, that *Buckley* focused not on the discrete dollar amounts in the statutory restriction, but rather on the consequences of the imposition of

the restriction. The Louisiana Supreme Court, quoting *Shrink Missouri*, framed the issue as follows:

> [W]hether there was any showing that the limits were so low as to impede the ability of candidates to "amass the resources necessary for effective advocacy." We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render the contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to mount a campaign with all the dollars likely to be forthcoming.

Casino Ass'n, 2002-0265 p. 11, 820 So.2d at 502 (quoting *Shrink Missouri*, 528 U.S. at 396-397.) (internal citation omitted).

In the instant case, the Louisiana Supreme Court asked this question, as it was framed in *Shrink Missouri*, and found that the population of individuals affected by the contribution ban is too small to be capable of impeding the ability of candidates to "amass the resources necessary for effective advocacy."

> Unlike the across-the-board restrictions involved in Buckley and Shrink Missouri, the restrictions in this case involve just one licensed land-based casino and licensed riverboat gaming facilities throughout Louisiana. Thus, clearly, in this case, the ban will have a very minimal effect on the candidates' ability "to amass the resources necessary for effective advocacy."

Casino Ass'n, 2002-0265 at p. 11, 820 So.2d at 503 (quoting *Shrink Missouri*, 528 U.S. at 396.).

Petitioners admit that the ban affects "less than 300 individuals associated with Louisiana's fifteen riverboat casinos and one land-based casino." Petition, 4. While the members of the casino industry might be particularly generous if allowed to contribute to political campaigns,

petitioners cannot genuinely argue that candidates are prevented from mounting effective campaigns due to a lack of casino dollars. Candidates and committees in Louisiana are conducting effective campaigns and will continue to "amass the resources necessary for effective advocacy" without the potential campaign contributions from these 300 individuals.

3. The Prevention of Corruption is a Substantial State Interest in Louisiana.

Gaming is a legalized vice that poses unique dangers in Louisiana. Louisiana's Constitution, as far back as the Constitution of 1879, declared gambling a "vice" and directed the Louisiana Legislature to enact laws for its suppression. *Casino Ass'n*, 2002-0265 at p. 14, 820 So.2d at 504, citing LA. CONST. Art. 172 (1879), LA. CONST. Art. XII, §6(B) (1974). Despite the negative public perception reflected in the Constitutional directive, gambling continued in Louisiana in the eighteenth and nineteenth centuries, with New Orleans recognized as the state's gambling capital. *Id.* at 504, citing Timothy L. O'Brien, Bad Bet: The Inside Story of the Glamour, Glitz, and Danger of America's Gambling Industry (1998).

The Constitution was amended in 1866 to allow the Louisiana Lottery Company, a private corporation, to begin operation under a state charter. *Id.* at 504. New Orleans benefitted from the Lottery proceeds, gaining a charity hospital and upgrading the public schools. *Id.* at 504, citing Stephanie A. Martz, Note, Legalized Gambling and Public Corruption: Removing the Incentive to Act Corruptly, or, Teaching an Old Dog New Tricks, 13 J.L. & Pol. 453, 458-59 (1997). However, in 1893 the federal government outlawed all forms of lottery sales and promotions. *Id.* at 505.

> Gambling remained available in New Orleans during the first decades of the twentieth century in small establishments around the city, even

> though the Constitution had outlawed all gambling. In 1934, [Governor] Huey P. Long allowed slot machines in New Orleans and several casinos outside the city. In the 1950s a reform movement ran the larger casinos away, but the slot machines and back-alley casinos stayed in business until the 1970s.

Casino Ass'n, 2002-0265 at p. 14, 820 So.2d at 505 (internal citations omitted).

In the early 1990's Louisiana's economy suffered a downturn. The legislature "turned to legalized gambling as a means out of the fiscal doldrums." *Ibid.* The Louisiana Supreme Court found that the Gaming Control Law "announced the public policy of this State concerning gaming." In La. R.S. 27:2(A), the Louisiana Legislature stated:

> The legislature hereby finds and declares it to be the public policy of the state that the development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of legislative power to protect the general welfare of the state's people **by keeping the state free from criminal and corrupt elements**. The legislature further finds and declares it to be the public policy of the state that to this all persons, locations, practices, associations, and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be **strictly regulated**.

Id. at 506 (emphasis added).

The Gaming Control Act additionally declared gaming "to be a pure and absolute revocable privilege and not a right, property or otherwise, under the constitution of the United States or of the state of Louisiana." La. R.S. 27:2(B); *Id.* at 506 (and cases cited therein). The same legislative session that produced the Gaming Control Law

saw the enactment of the statutory ban on contributions at issue in this case, La. R.S. 18:1505.2L.

The Court should consider the significance of the governmental interest behind the enactment of the contribution restrictions in light of the express legislative intent in the Gaming Control Law that gaming be "strictly regulated" so as to protect the public from "criminal and corrupt elements" and that engaging in the business of gaming is a "privilege and not a right." La. R.S. 27:2(B). As noted by the Louisiana Supreme Court, ample evidence of the legislature's intent regarding the statute can be found in its legislative history; La. R.S. 18:1505.2L was introduced in the legislature with the following information:

> . . . [w]e're attempting to track as well in this legislation what was done in New Jersey[4] which is the only state we know of that has imposed a statutory ban on gambling contributions.
>
> * * *
>
> . . . I think unfortunately we can make a strong argument in Louisiana that there is a compelling state interest to prevent the gambling industry from making contributions and there has been unfortunate data that would support that based upon some investigations that have been underway and the problems we've seen. . . .
>
> * * *
>
> . . . I think that this industry stands onto itself and ought to stand onto itself as one that we ought to be singling out for the purpose of trying to limit their involvement in the legislative process and unfortunately I think it is appropriate to look to what has happened over the course of the

[4] Referencing *Petition of Soto v. State of New Jersey*, 236 N.J. Super. 303, 565 A.2d 1088, *cert. denied*, 121 N.J. 608 (1989), *cert. denied*, 496 U.S. 937 (1990).

> past couple of years specifically on how individuals within the industry have been accused of attempting to influence the legislative process based upon the industry's entry into the state . . . it is directed to [sic] specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.
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> * * *
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> . . . I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political contributions.

Casino Ass'n, 2002-2165 at p. 17, 820 So.2d at 507 (quoting Senator Dardenne, see Committee on Senate & Governmental Affairs, Verbatim Transcript, Meeting of March 26, 1996, Senate Bill 12.).

As the quoted discussion makes clear, the Louisiana Legislature intended La. R.S. 18:1505.2L to provide a means of limiting the likelihood of a recurrence of corruption in the electoral process in this state. *Shrink Missouri* and *Buckley* found "the prevention of corruption and the appearance of corruption" to be a "constitutionally sufficient justification" for campaign contribution restrictions. 528 U.S. at 388 (citing *Buckley*, 424 U.S. at 25-26). Therefore, the express purpose behind the statute at issue in this case, the prevention of corruption and the appearance

of corruption by the gaming industry upon the political process, is a constitutionally sufficient justification for the campaign contribution restrictions under *Buckley* and *Shrink Missouri*.

Having established that the legislature intended that La. R.S. 18:1505.2L provide a means of preventing corruption, and that *Buckley* and its progeny approved the prevention of corruption, or the appearance of corruption, as a legitimate and substantial governmental interest sufficient to support legislative limits and restrictions on campaign financing, the Louisiana Supreme Court turned to an examination of the evidence in the court record that establishes the public's perception that gaming is associated with political corruption; the court explained:

> Evidence provided to the trial court in this case included affidavits outlining the public perception that gaming is associated with political corruption, information that within the last ten years, nine states (including Louisiana) have prosecuted governmental officials in gaming cases, and statistics showing the staggering sum of money collected by those within the gaming industry. This evidence illustrates why the legislature found it was imperative to prohibit campaign contributions from persons engaged in the gaming industry.

Casino Ass'n, 2002-0265 at p.19, 820 So.2d at 508.[5]

Recognizing that *Shrink Missouri* cautioned that the "quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up

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[5] See e.g. most recently, *United States v. Edwin Edwards, et al.*, 01-30036 (5th Cir. 8/23/2002), ___ F.3d ___, (Former Governor, his son and business associates, convicted of extortion, mail and wire fraud, and RICO violations in connection with their rolls in various schemes to make money from Louisiana's Riverboat Casinos by exploiting the Governor's apparent ability to influence the licensing process.).

or down with the novelty and plausibility of the justification raised," the Louisiana Supreme Court reasoned:

> Given the history of the gaming industry and its connection to public corruption, it is completely plausible, and not at all novel, for the Louisiana Legislature to have concluded that it was necessary to distance gaming interests from the ability to contribute to candidates and political committees which support candidates.

Casino Ass'n, 2002-0265 at p. 19, 820 So.2d at 508.

4. The Statute is Closely Drawn to Meet the Governmental Interest of Preventing Corruption.

The Louisiana Supreme Court properly rejected the Casino Association's argument that the statute is not "closely drawn" to support a sufficiently important government interest because there are less restrictive means available to address the state's concerns. In *Buckley*, the Court rejected the same argument: that the contribution limits must be invalidated because other provisions such as bribery laws and disclosure requirements constitute a "less restrictive means" of meeting the state interests. *Buckley* concluded, and this Court reaffirmed in *Shrink Missouri*, that contribution limitations target the problem of "large campaign contributions – the narrow aspect of political association where the actuality and potential for corruption have been identified. . . . " *Casino Ass'n*, 2002-0265 at p. 20, 820 So.2d at 508. Additionally, contribution restrictions do not limit the Casino Association's ability "to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Buckley*, 424 U.S. at 28, *Shrink Missouri,* 528 U.S. at 396, *California Medical Ass'n,* 453 U.S. at 199, n. 20. In disposing of the Casino Association's claim, the Louisiana Supreme Court stated:

> For the same reasons, we also reject the gaming interests' argument that the statute serves no legitimate purpose because other statutes, such as La. R.S. 27:310(B)-(C) already impose rigorous background checks and strict licensing restrictions on gaming interests, guaranteeing that anyone who obtains a gaming interest is "suitable" and honest.

Casino Ass'n, 2002-0265 at p. 20, 820 So.2d at 508.

In *Republican Party of Minnesota v. White,* 122 S.Ct. 2528, 2534, U.S. (2002) (No. 01-521), the Court invalidated an "announce clause," prohibiting state judicial candidates from announcing their views on issues in political campaigns, under the more rigorous strict-scrutiny review.

> Under the strict-scrutiny test, respondents have the burden to prove that the announce clause is (1) narrowly tailored, to serve (2) a compelling state interest. In order for respondents to show that the announce clause is narrowly tailored, they must demonstrate that it does not "unnecessarily circumscribe protected expression."

Id. at 2534 (citations omitted).

In examining the clause under a more demanding review than that required in the case at bar, the Court found that the clause was not narrowly tailored to serve the government interest of impartiality, stating:

> We think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in this sense. Indeed, the clause is barely tailored to serve that interest *at all,* inasmuch as it does not restrict speech for or against particular *parties,* but rather speech for or against particular *issues."*

Id. at 2535 (emphasis in original).

The restriction at issue in this case applies, by petitioners' admission, to particular persons, approximately

300 persons of the 17,000 employed by the gaming industry in Louisiana. See Petition at 4 and 7. As the statute at issue in this case, La. R.S. 18:1505.2L places its restriction upon particular parties, rather than on particular issues, it would be deemed "narrowly tailored" under this Court's analysis in *Republican Party* and would pass the more stringent strict-scrutiny test where the announce clause failed. *A fortiori*, if the statute is "narrowly tailored" for purposes of the most demanding strict-scrutiny review, it must be "closely drawn," satisfying the less exacting review required by the Court in *Shrink Missouri*.

5. La. R.S. 18:1505.2L is Not an Unnecessary Abridgment of Associational Freedoms.

The Louisiana Supreme Court made specific findings that ample opportunities exist for individuals in the gaming industry to fully express their First Amendment rights in the political process despite the statutory ban on campaign contributions. For example, as espoused in *Shrink Missouri*, members of the casino industry may make independent expenditures supporting or opposing particular candidates without limitation.[6] Further, gaming entities may urge their employees to support or oppose particular candidates, and corporate officers and employees may demonstrate their individual support of candidates by displaying yard signs and/or volunteering to work in campaigns. Gaming companies may even sponsor phone banks designed to encourage persons to vote. Louisiana Ethics Board Opinion No. 99-424.

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[6] Petitioners claim in their brief that the Louisiana Supreme Court misread the Campaign Finance Disclosure Act to determine that these individuals may make unlimited independent expenditures. This claim is inaccurate.

In *Schiller Park Colonial Inn, Inc. v. Berz*, 63 Ill.2d 499, 349 N.E.2d 61 (1976), an Illinois statute made it illegal for any liquor licensee, or company representative, to contribute directly or indirectly to a political party or candidate. The Illinois Supreme Court explained that the statute at issue did not prohibit liquor licensees from engaging in "any type of 'pure speech,'" as they were free to express their political opinions and announce their support for candidates or political parties, exercise their voting rights, or join political parties, or volunteer their services to those parties or groups. *Id.* at 508.

The decisions in *Schiller Park*, *Buckley*, and *California Medical Association* each recognize the distinction between direct speech and the type of "speech by proxy" represented by campaign contributions. As stated by the Court in *Buckley* and quoted in *California Medical Association*:

> While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, 424 U.S. at 21, and *California Medical Ass'n*, 453 U.S. at 197.

The Honorable Justice Stevens, in his concurring opinion in *Shrink Missouri*, elaborated on the speech by proxy concept by stating:

> Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

528 U.S. at 398 (Stevens, J. concurring).

The Louisiana Supreme Court appropriately placed utmost importance on the distinction between pure political speech and speech by proxy in examining the constitutionality of La. R.S. 18:1505.2L. The statute does not infringe upon the 300 casino industry employees' ability to engage in pure free political speech; rather, the court determined that the statute imposes a limited restriction on key members of the casino industry's ability to contribute money for use by another person. The statute imposes a minor limitation on First Amendment associational rights; a limitation narrowly tailored to meet the state's substantial interest in preventing the corruption of candidates for political office, justifiably based upon the historically corrosive influence of money flowing from the casino industry into state politics.

6. The Trend Among the States in Enacting Limitations on Campaign Contributions Evidences Concurrence in National Public Policy.

Louisiana does not stand alone in enforcing the public policy of restricting the gaming industry's influence on state government. Indeed, at least seven other states have banned contributions from gaming interests.[7] However,

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[7] Indiana, Ind. Stats. 4-33-10-2.1 (Prohibits contributions from any officer or person who holds an interest in a gaming entity.), Iowa, Iowa Stats. 99F.6(4)(a) (Prohibits contributions from riverboat gambling corporations.), Kentucky, Rev. Stats. 154(a).160 (Prohibits contributions from persons owning lottery contracts.), Michigan, Mich. Stats. 7(b)(4)-(5) (Prohibits contributions from any licensee or person who has an interest in a gaming entity.), Nebraska, Neb. Stats. 49-1469.01 (Prohibits contributions from lottery contractors for duration of contract and three years after.), New Jersey §5:12-138 (Prohibits contributions from casino officers or key employees.), Virginia, §59.1-375, 376 (Prohibits contributions from pari-mutual corporations, executives and their spouses and families.).

only one other reported decision specifically addresses the constitutionality of a comparable restriction on campaign contributions by gaming interests: *Petition of Soto v. State of New Jersey*, 236 N.J. Super. 303, 565 A.2d 1088, *cert. denied,* 121 N.J. 608 (1989), *cert. denied,* 496 U.S. 937 (1990). In *Soto*, the Superior Court of New Jersey held that the state had a compelling interest in "maintaining the integrity of political parties and organizations from undue influence by those individuals who, by the very nature of their employment, play a pivotal role in the casino industry." *Soto*, 565 A.2d at 1098. The New Jersey court commented, "[g]ambling is an activity rife with evil, so prepotent its mischief in terms of the public welfare and morality that it is governed directly by the [New Jersey] Constitution itself." *Id.* at 1097. In further support of the governmental purpose sought to be achieved by the ban on campaign contributions by gaming licensees, the New Jersey court noted:

> Given the acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry, but also the governmental process which so closely regulates it, *Greenberg*, 99 N.J. at 574, there is no viable alternative available to prevent the appearance of, or actual, corruption on the political process in New Jersey. As noted by Justice Pollock in *Greenberg* "a perception that any improper influence has infiltrated the [regulatory and judicial] processes, however slightly, would undermine the trust that is essential to the continued confidence in the industry and, what is more important, in state government."

Id. at 1098.

The Louisiana and New Jersey Courts are the only two state courts that have examined a ban such as the one at issue in this case, and those courts are in agreement that the ban is constitutional under the principles set forth by this Honorable Court in *Buckley* and *Shrink*

Missouri. Since the issue has only been examined twice, and both courts are in agreement, there is no conflict which this Court needs to resolve through its discretionary review.

Other state courts have considered similar types of bans on contributions by particular industries. For instance, a complete ban on contributions was upheld by the Illinois Supreme Court in the case of *Schiller Park Colonial Inn, Inc.*, 63 Ill.2d 499. The Illinois statute made it illegal for any liquor licensee, or company representative, to contribute directly or indirectly to a political party or candidate. The ban was upheld and the court noted that the legislature was allowed to ban contributions of any amount, not just large contributions. Using a rationale similar to that of the Louisiana and the New Jersey courts, the Illinois court upheld the statute because the "nature of the liquor industry is a prime consideration in judging the validity" of the ban on liquor licensees making campaign contributions. 63 Ill.2d at 507.

Delaware, Florida, Montana, and Washington prohibit insurers from making contributions to candidates for the Office of Insurance Commissioner. Delaware Code 18 §2304(6); Florida Statutes Title XXXVII §627.0623; Montana Code Ann. 33-18-305; and Washington RCW 48-30.110. The State of Florida also prohibits licensed food outlets and convenience stores from contributing to Commissioner of Agriculture candidates. Florida Statutes Title IX §106.082. In Georgia, public utilities are prohibited from contributing to any political campaign. Official Code of Georgia Ann. 21-5-30(f). Georgia law further prohibits any regulated entity from contributing to any candidate for the office that regulates that entity. Official Code of Georgia Ann. 21-5-30.1.

These varied state statutes reflect the national public policy that contributions from certain highly regulated industries pose a threat to the integrity of the election process. Louisiana's Supreme Court has properly analyzed

and upheld the contribution ban in the context of the gaming industry and the state's public policy concerns.

7. Privileges May Be Permissibly Burdened with Certain Limitations.

The ability to operate a gaming establishment in Louisiana is a highly-regulated privilege conferred by state license pursuant to terms and conditions carefully prescribed by the state. *Casino Ass'n*, 2002-0256 at p. 15, 820 So.2d at 505. See also *Catanese v. Louisiana Gaming Control Board*, 97-1426 (La. App. 1 Cir. 5/15/98), 712 So.2d 666, 670. The Louisiana Legislature specifically declared gaming "a pure and absolute revocable privilege and not a right, property or otherwise, under the constitution of the United States or of the state of Louisiana." *Casino Ass'n*, 2002-0256 at p. 16, 820 So.2d 506; The Gaming Control Act, La. R.S. 27:2(B). Moreover, it is a lucrative privilege with statistics showing the staggering sums of money collected by those in the gaming industry.[8] In exchange for the ability to reap these huge returns in an industry with limited participants, licensed gaming entities and individuals are obliged to forego some political rights. The limitations are similar to those imposed upon classified civil servants in Louisiana and at the federal level, members of the Louisiana Civil Service Commission,[9] judges in Louisiana,[10] and members of the Louisiana Board of Ethics.[11]

Louisiana civil service employees and commissioners, and, for that matter, Ethics Board members, are legislatively required to surrender their "rights" to make campaign

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[8] *Casino Ass'n*, 2002-0256 at p. 19, 820 So.2d at 508.

[9] LA. CONST. Art X., §9.

[10] La. Code of Judicial Conduct, Canon 7.

[11] La. R.S. 42:1132B(3)(e).

contributions as well as engage in other political activity in consideration of the appointment to highly discretionary governmental positions. Judges are likewise severely limited in their political expression. Considering that licensed and regulated gaming interests control discretionary and lucrative governmental permits giving substantial corresponding business opportunities, it is responsible, and constitutionally permissible, for the state to burden these applicants with reasonable and narrowly tailored restraints against certain types of campaign contributions.

Indeed, courts have long upheld restrictions on the political activities of federal and state civil servants which are much more extensive than the restrictions at issue here.[12] The Court has concluded in such cases that "[n]either the right to associate nor the right to participate in political activities is absolute." *United States Civil Serv. Comm'n v. Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973).

The Casino Association complains that it is subject to different requirements than the video poker industry because in *Penn* the Louisiana Supreme Court declared similar contribution restrictions unconstitutional as to the video poker industry. 751 So.2d 823. Petitioners argue that the court's failure to follow its prior opinion in *Penn* is illogical and renders the Louisiana Supreme Court's opinion arbitrary. However, the Louisiana Supreme Court declined to follow its earlier decision in *Penn*, not due to Justice Lemon's retirement, but rather because the court found significant differences between the regulation of the video poker industry and the Casino Association. See Petition, 9; *Casino Ass'n*, 820 So.2d at 497, 509. The

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[12] See, *Ricks v. Department of Civil Service*, 200 La. 341, 8 So.2d 49 (1942).

Louisiana Supreme Court found that there are an unlimited number of video poker licenses available, whereas, only one land-based casino and 15 riverboat casinos have been licensed in Louisiana. *Id.* at 509. The prohibitions at issue in *Penn* also did not apply equally to all persons engaged in the video poker industry, while the restrictions in this case are uniform. *Ibid.* This Honorable Court has expressed the same principle in *California Medical Association*, as follows:

> The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.

453 U.S. at 201.

It is the state's contention that differing restrictions and limitations may be placed on those individuals and entities licensed to operate video poker lounges than those entities licensed to operate casinos. In this case, the state believes, justifiably, that the casino industry requires a different, more complete form of regulation to protect the public from corruption and the appearance of corruption in the electoral process. As a result, the legislature has imposed a uniform ban on political contributions from those individuals that are integral to the casino industry. In reliance on this Court's jurisprudence, the Louisiana Supreme Court properly upheld this public policy decision made by the state's legislature.

V. CONCLUSION

The Louisiana Supreme Court properly upheld the constitutionality of La. R.S. 18:1505.2L based upon a wealth of state and federal jurisprudence supporting the validity of a statutory ban on campaign contributions from

certain, narrowly-defined, sources. The Louisiana Supreme Court's opinion is correct and should be allowed to stand.

The Court has consistently and repeatedly recognized the substantial governmental interest in preventing corruption or the appearance of corruption which results from the indebtedness of political candidates to their contributors. The Court has even referred to this governmental interest as "compelling."[13]

The prohibitions in La. R.S. 18:1505.2L are specifically directed to insulate candidates for public office, and the electoral process, from the actual and perceived corrosive effect of financing by the gaming industry. The history and nature of the gaming industry, and the public perception of it, make the interests served by La. R.S. 18:1505.2L compelling. The gaming industry is different from other industries and poses unique dangers. The legislature has moved thoughtfully and temperately in its efforts to prevent the gaming industry from harming public trust in government.

The legislature has chosen to "legalize" this vice, against the background of a state constitutional mandate to "suppress" gambling, and under heavily-regulated standards intended to minimize the industries' capacity to wield undue influence. The legislature could have chosen to completely ban such gaming activities. Those who successfully seek the substantial pecuniary rewards associated with casino gambling should reasonably be obliged to comport with the statutory licensing requirements – including the challenged ban on campaign contributions.

For these reasons, this Honorable Court should deny the Casino Association's Petition for a Writ of Certiorari,

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[13] *National Conservative Political Action Committee*, 470 U.S. at 496.

allowing the Louisiana Supreme Court opinion to stand, maintaining the constitutionality of the challenged sections of Louisiana's Campaign Finance Disclosure Act.

Respectfully submitted,

R. GRAY SEXTON
MARIS LEBLANC MCCRORY
KATHRIN YATES NIELSON
Counsel for the Supervisory Committee on Campaign Finance Disclosure, the Honorable Richard P. Ieyoub, Attorney General, and the Honorable Murphy J. Foster, Jr., Governor
2415 Quail Drive
Third Floor
Baton Rouge, Louisiana 70808
Telephone: (225) 763-8777

Counsel for Respondents